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**Date:** November 10, 2005

**To:** Workforce Development Board (WDB) Directors  
Job Service Directors  
Job Service Supervisors

**From:** Connie Colussy, Director  
Bureau of Workforce Programs

**Subject:** **WIA Policy Update 05-08 Definition of Family, Family Care, and Health/Medical Conditions That Exclude Participants from Workforce Investment Act (WIA) Title 1, WIA Title 3, and Trade Adjustment Act (TAA) Performance Measures**

### Purpose

On April 15, 2005, the U.S. Department of Labor (U.S. DOL), Employment and Training Administration (ETA) published Training and Employment Guidance Letter (TEGL) 28-03: Common Measures Policy. The TEGL includes provisions under which a customer may exit from U.S. DOL programs and be excluded from the performance measure calculations. The provisions address customers who exit for health/medical or family care reasons. Local staff have asked for guidance on the definition of "family," "family care," and "health/medical reasons" under this provision.

### Legislative/Regulatory References

- **WIA of 1998, U.S. Public Law 105-220:** Definitions.
- **WIA of 1998, Federal Regulations, Subpart A, Section 666:** State Measures of Performance.
- **Family and Medical Leave Act of 1993, U.S. Public Law 103-3:** Definitions and policies.
- **US DOL TEGL 7-99:** Core and Customer Satisfaction Performance Measures for the Workforce Investment System.
- **Functional Series 400, Interim Update #20, U.S. Office of Personnel Management:** Family Leave Policies for Federal Employees.
- **US DOL TEGL 28-04:** Common Measures Policy.
- **S.103.10(1), Wis. Stats.:** Employment, Family or Medical Leave.
- **S.46.286, Wis. Stats.:** Social Services, Family Care Benefit.
- **Chapter HFS1.01, WI Administrative Code:** Uniform Fee System definitions.
- **Chapter DWD12.23(3)(a), WI Administrative Code:** Wisconsin Works, Liability provisions.
- **Chapter DWD 12.25(7)(a)9.a., WI Administrative Code:** Wisconsin Works, Learnfare provisions.
- **Chapter DWD 12.25(10)(b)7., WI Administrative Code:** Wisconsin Works, Good Cause for Not Participating in Case Management Provisions.

### Background

The Common Measures Policy (TEGL 28-04) applies to all U.S. DOL funded employment and training programs, including Workforce Investment Act (WIA) Titles 1 and 3, and the Trade

Adjustment Act (TAA). The policy sets forth the performance measure requirements that states and local boards are held accountable for each program year.

The WIA defines "family" as follows:

"The term 'family' means two or more persons related by blood, marriage, or a decree of court, who are living in a single residence, and are included in one or more of the following categories:

- A. A husband, wife, and dependent children.
- B. A parent or guardian and dependent children.
- C. A husband and wife."

This definition has historically applied to the WIA Title 1 Youth Program under the low income eligibility requirements.

The U.S. Office of Personnel Management (OPM) defines "family member" as follows:

"Family member means the following relatives of the employee:

- a. Spouse and parents thereof;
- b. Children, including adopted children, and spouses thereof;
- c. Parents;
- d. Brothers and sisters, and spouses, thereof; and
- e. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

Past policy allowed the exclusion from the performance measures of individuals who could no longer receive services due to a health/medical condition that prevented continued program participation. U.S. DOL expanded the common measures exclusion policies with the publication of TEGL 28-04 to accommodate a number of circumstances that affect an individual's ability to continue participating in its employment and training programs. The health/medical exclusion was expanded to cover family care as a legitimate reason for exclusion from the performance measures. U.S. DOL did not define "family care" or "health/medical" reasons.

U.S. DOL representatives have advised states to use a broader definition of "family" for performance measure exclusion purposes than the definition that applies to youth eligibility determination based on low income status. As the list of Legislative References above demonstrates, there is a vast array of definitions and policies that define "family" and "family care." Division of Workforce Solutions (DWS) staff requested input from field staff while concurrently researching these definitions within the State of Wisconsin and Federal laws and regulations.

Under the same OPM policy cited above, the agency provides guidance on how broadly to define "family member":

"This benefit is intended to be 'family friendly' and to permit employees to care for individuals outside the traditional nuclear family. OPM's regulations ... for family care are intended to address the needs of employees struggling to manage child care, elder care, family emergencies and other personal responsibilities... This definition recognizes that in today's society, there are both traditional and nontraditional families and that the *responsibilities placed on the employee* are the same in both cases."

Wisconsin Statutes, Administrative Rules and program policies are diverse in their definitions of "family" and "family care." In our research, we found various references across departmental lines that list parents, non-marital co-parents, step-parents, spouses, legal dependents, grandparents and other blood relatives. Wisconsin statutes (s. 103.10(2)) state:

"Nothing...prohibits an employer from providing employees with rights to family leave or medical leave which are more generous to the employee than the rights provided under this section."

The above referenced policies and definitions establish a number of precedents. For all of these reasons, DWS believes it is appropriate to provide the proposed guidance on the definition of "family" for purposes of defining "family care" and using it as a global exclusion under the U.S. DOL-mandated performance measures.

There is no specific guidance in existing resources regarding a definition of "health/medical reasons." Therefore, DWS staff have developed a list of conditions that they believe fit the intent of this exclusion.

## **Policy**

Exclusions are intended to account for unanticipated circumstances beyond the participant's control. Under Federal regulations, an exclusion is permitted when "The participant is receiving medical treatment or providing care for a family member that precludes entry into unsubsidized employment or continued participation in the program. This does not include temporary conditions or situations expected to last for less than 90 days."

Depending on the circumstances, the case manager may opt to first place the participant into a planned gap in service if the condition is not expected to be permanent or has a high probability of reversal.

### *Family and Family Care*

When a participant must exit a program for family care reasons, the case manager may employ the global exclusion, if the condition is expected to last longer than 90 days. A family care situation does not have to be medical or health related. For conditions that are expected to last less than 90 days, case managers are encouraged to place the participant in a planned gap in service, instead of exiting the participant from the program. Family means any of the following:

1. Spouse;
2. Children (biological - including grandchildren, adopted or foster child), and their spouses or parents;
3. Grandparents, step-parents, aunts and uncles related through blood or marriage;
4. Brothers and sisters, their spouses, and their children;
5. Common law husband and wife; or,
6. An adult couple who have been cohabiting for at least one year.

Co-habitation, when it involves an unmarried, adult couple, must be documented by the existence of a written cohabitation agreement or other legal documentation that establishes the relationship as more than roommates named on an apartment lease. Cohabitation agreements document that any two partners have integrated their residence, property, and daily lives. If children are involved and cited as the reason for exiting the program, either one or both partners must be the biological or adoptive parents of the children.

## *Documentation*

Exits for family care reasons must be accompanied by appropriate documentation.

Documentation can be in the form of case notes, physician's letter, or a letter from any of the above listed family members. Cohabitation agreements must contain the date of the agreement to establish a baseline for determining 1 year and must contain the names and signatures of the partners and list the children by name and relationship, if applicable. There are numerous websites that discuss the particulars of cohabitation agreements. If the case manager wishes to claim a global exclusion for a customer in this type of a relationship, a copy of the cohabitation agreement must be placed in the case file.

## *Health/Medical Conditions*

1. Illnesses with a high probability of death;
2. Long term, chronic conditions that render a participant unable to work or continue participation in the program;
3. Conditions requiring long periods (greater than 90 days) of hospitalization or residence in a long-term care facility;
4. Significant temporary or chronic disability requiring long periods (greater than 90 days) of rehabilitation or treatment;
5. Pregnancy with documented complications;
6. High risk pregnancy requiring extensive bed rest and medical observation; or
7. Illnesses or conditions that result in long periods (greater than 90 days) of confinement (voluntary or mandatory) in an institution or a long term care facility.

Exits for health/medical reasons must be accompanied by appropriate documentation.

Documentation includes physician's letter; hospital or other medical record; signed and dated applicant statement of self-attestation; or case notes that specify how the condition was discovered, who reported it, contact information for follow-up and validation purposes, and date of contact.

Health/medical conditions that are NOT covered by the exclusion are:

1. Pregnancy with no complications;
2. Illness or condition of short duration (less than 90 days) from which the participant is expected to fully recover; and
3. Illness or condition that does not affect a participant's ability to continue program participation or enter employment.

These definitions apply to customers receiving services under WIA Title 1, Title 3 and TAA.

## **ASSET Reporting**

The appropriate exit reason should be selected from the dropdown menu of exit reasons on the Manage Exits screen in ASSET. A field will be added to the Manage Follow Up screens to allow global exclusion reporting when the exclusion occurs in the first, second or third quarters after the exit quarter. Until this functionality is added to ASSET, case managers may submit requests via the Staff Change Request function to request that the Exit reason be changed to reflect the exclusion. The details should be documented in a case note in ASSET.

**Action Required**

This policy is effective November 1, 2005 and applies to any WIA Title 1, WIA Title 3 or TAA participant who exited from the program on or after April 1, 2004, which is the earliest date that applies to Program Year 2005 performance measures. If you have any questions about this policy, please contact your Local Program Liaison.